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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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11 In re WELLS FARGO RESIDENTIAL  
12 MORTGAGE LENDING DISCRIMINATION  
13 LITIGATION

M: 08-CV-1930 MMC

**ORDER DENYING DEFERRED PORTION  
OF DEFENDANT'S OBJECTIONS TO  
MAGISTRATE JUDGE'S MARCH 3, 2009  
ORDER**

14 This Document Relates To:

15 ALL ACTIONS /

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17 Before the Court is the deferred portion of defendant's "Objections to Magistrate's  
18 Order Denying Motion to Compel Further Discovery," filed March 18, 2009, by which  
19 defendant objects to Magistrate Judge James Larson's "Order Denying Defendants' Motion  
20 to Compel Discovery," filed March 3, 2009. Plaintiffs have filed opposition, to which  
21 defendant has replied. Further, with leave of court, plaintiffs have filed a surreply. Having  
22 read and considered the parties' respective submissions, the Court rules as follows.

23 In his March 3, 2009 order, the Magistrate Judge denied defendant's motion to  
24 compel plaintiffs to answer interrogatories and produce documents pertaining to plaintiffs'  
25 "real estate sophistication and the purpose of their loans" (see Order, filed March 3, 2009,  
26 at 9:23-24), and to plaintiffs' "credit data and history" (see id. at 9:27-28).<sup>1</sup> The Court finds

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28 <sup>1</sup>Additionally, the Magistrate Judge ruled that plaintiffs need not supplement certain  
discovery responses until such time as defendant had provided to plaintiffs certain  
discovery specified by the Magistrate Judge; by order filed April 1, 2009, the Court denied  
defendant's Objections to the extent defendant objected to such ruling.


1 defendant has failed to show the Magistrate Judge's order is clearly erroneous or contrary  
2 to law.

3 In so ruling, the Court notes, however, that the discovery sought, or some portion  
4 thereof, may be discoverable at a later stage.<sup>2</sup> As the cases on which plaintiffs rely  
5 recognize, evidence pertaining to the circumstances occurring when a plaintiff seeks the  
6 defendant's services may be relevant to the merits of the type of claims alleged herein. In  
7 Coleman v. General Motors Acceptance Corp., 220 F.R.D. 64 (M.D. Tenn. 2002), for  
8 example, the plaintiff alleged a claim similar to that alleged herein, i.e, that the defendant, a  
9 finance company, allowed dealers to add a "subjective non-risk-related markup" to the  
10 interest rate it imposed, and that the application of such markup "cause[d] black consumers  
11 to pay higher average finance charges than similarly-situated white consumers." See id. at  
12 67-68. The district court, while finding "individual buyer characteristics, dealer  
13 characteristics, and the wide variety of pricing programs" are "not barriers to class  
14 certification," also noted those issues could be "appropriate subjects for cross-examination  
15 or rebuttal" during the trial on the merits. See id. at 74; see also Jones v. Ford Motor Credit  
16 Co., 2005 WL 743213, at \*16 (S.D. N.Y. 2005) (observing defendant finance company, at  
17 merits stage, "may be able to show that there are valid business reasons for a Mark-Up  
18 Policy, for example because it allows dealers flexibility in offering customer financing, as  
19 demonstrated by the facts of [a named plaintiff's] purchase").

20 Accordingly, the deferred portion of the Objections is hereby DENIED, without  
21 prejudice to defendant's seeking appropriate discovery during the second phase of the  
22 discovery proceedings.

23 **IT IS SO ORDERED.**

24 Dated: June 29, 2009  
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MAXINE M. CHESNEY  
United States District Judge

27 <sup>2</sup>The parties previously agreed, and in light of said agreement the Court ordered,  
28 that discovery in the above-titled action would be bifurcated into "two phases – an initial  
phase focused on issues concerning class certification, and a subsequent phase focused  
on the merits." (See Pretrial Order on Case Management, filed January 8, 2008, at 3:2-3.)